

REMARKS

Claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 are pending in the application.

Claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 stand rejected.

Claims 1, 14, 17, and 30 have been amended without adding any new subject matter to the instant specification. From the discussion below, it is observed that, although not necessary, these claims have been amended just to clarify the subject matter recited therein so as to expedite the prosecution of the instant application. The present claim amendments find support throughout the specification of the instant application. For example, the visual adjustment patterns and application of corresponding member-selectable adjustment values (using percentages picklists 314 in Figure 18C) are discussed with reference to discussion of Figures 18A-18D in the specification of the instant application. Applicants assert that the present claim amendments should not be construed as indicating Applicants' acceptance of the reasons for rejection of various claims in the Office Action.

After present claim amendments, claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 still remain pending in the application.

Rejection of Claims under 35 U.S.C. §103

Claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sultan, U.S. Patent No. 6,804,657 (Sultan) and Gozdeck et al., U.S. Patent No. 6,636,852 (Gozdeck) in view of various Official Notices. Applicants respectfully traverse the obviousness rejections of claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 in view of the following remarks and present claim amendments.

Applicants initially observe that the present Office Action reproduces, verbatim, the text corresponding to rejections of claims 15 and 31 from the Office Action of July 18, 2007, without recognition that claims 15 and 31 were cancelled by the applicants in their response to the Office Action of July 18, 2007. Applicants respectfully request that canceled claims 15 and 31 be noted as such.

Also as an initial matter, Applicants hereby incorporate all discussions related to the patentability of pending claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 in view of Sultan and Gozdeck (in view of the Examiner's various Official Notices), as presented in Applicants' responses to applicable previous Office Actions, to the extent that those arguments are relevant to the currently pending claims. Because Applicants' responses to previous Office Actions provided detailed discussions of teachings in Sultan and Gozdeck, such earlier discussions are not repeated herein for the sake of brevity.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). In determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See* MPEP 2141.02 (2007), *citing Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); and *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

To establish a *prima facie* case of obviousness, MPEP §2142 requires:

To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person

of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. (Emphases added.)

Applicants assert that the Office Action fails to establish a *prima facie* case of obviousness with respect to all the claim limitations in each pending claim in the instant application, regardless of the present claim amendments. Based on Applicants' response to the Office Action dated December 10, 2007, Applicants continue to assert that neither Sultan nor Gozdeck, either alone or in permissible combination, teaches or suggests all the claim limitations recited in the independent claims 1, 14, 17, and 30, regardless of the present claim amendments. Furthermore, as discussed in the same response, the Official Notice of automatic forecast generation and reliance on Martin (US Patent Application Publication No. US 2002/0107720) in support thereof also fail to remedy the various deficiencies in the combined teachings of Sultan and Gozdeck. Applicants respectfully submit that the Office Action's continued reliance on Martin (in the present Office Action) at pages 14-15, in support of the rejection of claims 16 and 32 is misplaced. As discussed subsequently, dependent claims 16 and 32 are patentable at least based on their dependence on corresponding allowable independent claims 14 and 30. Therefore, although further discussion of Martin is not provided herein, Applicants reserve the right to provide additional arguments in the future in support of patentability of these or other claims over Martin, as Applicants may deem necessary or advisable.

Applicants assert that neither Sultan nor Gozdeck, either alone or in permissible combination, teaches or suggests all the claim limitations in amended independent claim 1, which recites a method for generating forecast information corresponding to an organization, wherein the method comprises, in relevant part, “creating a forecast series...; identifying opportunity data corresponding to members of the organization...associated with positions in a hierarchy structure...[that] comprises a plurality of management levels; associating revenue data with identified opportunity data to create at least one revenue schedule...; providing a plurality of visual adjustment patterns in graphical shapes displaying a corresponding plurality of member-selectable adjustment values, wherein selection of a visual adjustment pattern by a member of the organization results in an automatic application of the corresponding member-selected adjustment value to a member-selected entry in a revenue schedule in a manner depicted by a shape of the selected visual adjustment pattern...; and generating a forecast for...[a] first member of the organization using the set of parameters in the forecast series and based on a forecast submitted by...at least one subordinate member who is required to provide corresponding subordinate member-level forecast to said first member...wherein a forecast for said at least one subordinate member is automatically generated when said at least one subordinate member fails to submit a forecast prior to generation of the forecast for the first member.” (Emphases added.)

Based on Applicants’ earlier response to Office Action (that dated December 10, 2007) and without repeating arguments presented therein, Applicants respectfully assert that none of the cited references teaches or reasonably suggests, either alone or in combination, all the claim limitations recited in amended independent claim 1. Applicants respectfully observe that earlier Office Actions failed to establish the obviousness of pending claims in view of purported

teachings in the cited references. The present Office Action shifts course and, in so doing, makes several cognitive leaps (in regard to which Applicants express concern as to “impermissible hindsight” under MPEP §2142). Applicants respectfully note that these cognitive leaps take the form of numerous Official Notices that attempt to establish unpatentability of pending claims in the instant application without any evidentiary support. At least two of those Official Notices on pages 6-7 in the present Office Action are deserving of particular scrutiny and, hence, Applicants address them in more detail below. (Applicants, however, do not accede to the reasoning in support of any of these Official Notices in the present Office Action, whether or not discussed below.)

Prior to addressing those two Official Notices in more detail, Applicants wish to draw attention to the following texts reproduced from the MPEP related to propriety, nature, and scope of Official Notices. The Office’s preference for a judicious and sparing use of Official Notices and its emphasis on avoidance of misuses of Official Notices are quite clear from a careful reading of MPEP §2144.03.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” MPEP §2144.03(A). (Emphasis added.)

As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Citing, In re Zurko*, 258 F.3d at 1385 (Fed. Cir. 2001). MPEP §2144.03(A).

In certain older cases, official notice has been taken of a fact that is asserted to be “common knowledge” without specific reliance on documentary evidence where the fact noticed was readily verifiable, such as when other references of record supported the noticed fact, or where there was nothing of record to contradict it. ...If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her

conclusion of common knowledge. ....The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice so as to adequately traverse the rejection in the next reply after the Office action in which the common knowledge statement was made. MPEP §2144.03(B). (Emphases added.)

[A]ny facts so noticed should be of notorious character and serve only to “fill in the gaps” in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based...Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner’s conclusion should be judiciously applied. MPEP §2144.03(E). (Emphases added.) (Citations omitted.)

Through the first Official Notice, the Office Action attempts to remedy Sultan’s failure to disclose automatic application of an adjustment value to a revenue schedule entry using a visual adjustment pattern. (See, present Office Action, pages 6-7.) The Official Notice taken of the use of selectable graphical shapes in the area of user interfaces is said to enhance “the user-friendliness of the Internet browser interface [in Sultan] ... .” However, such a statement misinterprets the claim limitations recited in amended independent claim 1.

The assertion of the broad and universally applicable concept of “user-friendliness” purpose avoids addressing the limitation’s context and details of the claim limitation at issue. Amended independent claim 1 recites, in relevant part, “providing a plurality of visual adjustment patterns in graphical shapes displaying a corresponding plurality of member-selectable adjustment values, wherein selection of a visual adjustment pattern by a member of the organization results in an automatic application of the corresponding member-selected adjustment value to a member-selected entry in a revenue schedule in a manner depicted by a shape of the selected visual adjustment pattern.” The Official Notice taken vaguely asserts that

“the use of selectable graphical shapes are [sic] old and well known features in the art of user interfaces.” (See, present Office Action, page-7.) (Emphasis added.)

From the foregoing, it is observed that the Official Notice completely fails to address automatic application of an adjustment value to a member-selected entry in a revenue schedule in a manner depicted by a graphical shape of the selected visual adjustment pattern as recited in amended independent claim 1 and discussed in more detail with reference to discussion of Fig. 18C in the instant application. The member-selectable nature of adjustment values and graphical shape-dictated application of those values are neither taught nor suggested by the cited references. Nor are they open to instant and unquestionable demonstration as being well-known, as required under MPEP §2144.03(A). Hence, Applicants respectfully request that evidentiary support—either in the form of documentary evidence, or an affidavit or declaration, as required under 37 CFR §1.104(d)—be provided for the assertions made and facts noticed in this instance of Official Notice.

Through the second Official Notice, an attempt is made to find a “solution” to Sultan’s failure to show, teach, or suggest automatic generation of a forecast for a subordinate member—who is required to submit its member-level forecast to a superior member in the hierarchical management structure as recited in amended independent claim 1. (See, present Office Action, page-7.) The Office Action correctly cites the claim limitation as requiring automatic generation of a forecast when the subordinate member fails to submit the forecast. However, this failure to submit requirement is not equivalent to the failure to manually generate a report, as (erroneously) characterized in the Office Action. (See, present Office Action, page-7.) The Office Action then draws the conclusion (from this erroneous characterization) that “it would have been obvious to a person of ordinary skill in the art to modify Sultan to have a forecast automatically generate [sic]

when a subordinate member fails to generate the forecast before a certain time.” (See, present Office Action, page-7.) (Emphasis added.) Furthermore, the assertion that the automatic forecast generation aspect recited in amended independent claim 1 “is old and well known in the art of report generation” ignores the fact that amended independent claim 1 does not recite automatic forecast generation in a vacuum, but rather in the context of a hierarchical management structure, where a subordinate member, who is required to provide corresponding member-level forecast to a member at a superior management level in the hierarchical structure, fails to submit his/her forecast prior to generation of the forecast for the superior member. Applicants assert that the Official Notice taken in the Office Action fails to consider the context in which the automatic forecast generation is claimed in amended independent claim 1.

As noted earlier, in order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. See 35 U.S.C. §103(a). In this regard, and as pointed out in the Applicants’ response to the Office Action dated December 10, 2007, not only is automatic forecast generation not shown, taught or suggested by the primary reference (Sultan), Sultan is completely silent with regard to what happens when a subordinate member in the hierarchical organizational structure in Sultan fails to submit pipeline data prior to generation of forecast sales information by the subordinate’s superior. In view of Sultan’s failure to even recognize the issue of a missing forecast submission, and the absence in Sultan of an indication or suggestion—even a hypothetical one—of the problem of a missing forecast submission in the context of a forecasting process carried out within a hierarchical organizational structure, Applicants assert that the blanket and non-contextual assertion in the Office Action that the claimed automatic forecast generation is “old and well known,” and so under the guise of an



Official Notice renders the propriety of the Official Notice questionable under MPEP §2144.03(E). Applicants therefore respectfully maintain their request that the Examiner to provide evidentiary support—either in the form of a documentary evidence or in the form of an affidavit or declaration as required under 37 CFR §1.104(d)—for the assertions made and facts noticed in this Official Notice.

From the foregoing discussion, Applicants assert that amended independent claim 1, as a whole, is not rendered obvious under 35 U.S.C. §103(a) by the combination of Sultan and Gozdeck, despite official notice taken of various facts without proper contextual or evidentiary support. The dependent claims 2-3, 5-8, and 34 are also patentable over Sultan and Gozdeck at least based on their dependence on the allowable independent claim 1. The other independent claims 14, 17, and 30 have been amended to contain at least the limitations similar to those recited above with respect to claim 1. Therefore, the arguments in favor of patentability of claim 1 over the combination of Sultan and Gozdeck (in view of Examiner's Official Notices) equally apply to the patentability of amended independent claims 14, 17, and 30 under 35 U.S.C. §103(a). Hence, their corresponding dependent claims 16 and 35 (claim 14); 18-19, 21-24, and 36 (claim 17); and 32, 37 (claim 30) are also allowable over the combination of Sultan and Gozdeck at least based on their dependence on the allowable independent claims 14, 17, and 30. Therefore, reconsideration and allowance of claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32, and 34-37 is respectfully requested.

*Miscellaneous Comments*

Applicants respectfully note that in responding to this Office Action, Applicants do not intend that arguments not proffered be construed as Applicants' agreement with any reasons for rejecting the pending claims presented in the Office Action. The claims have been amended

herein simply to expedite the prosecution of the present application without protracted argument. By these amendments, Applicants do not concede that the cited references amount to “prior art” to any invention now, previously or subsequently claimed. Applicants further reserve the right to pursue the original version of the claims in the future, for example, in a continuing application.

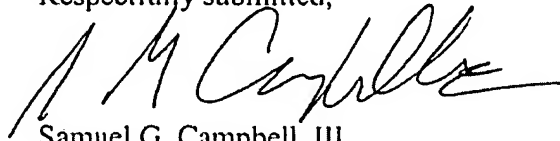
Notwithstanding that the Applicants have clearly distinguished the currently amended set of claims from teachings in Sultan and Gozdeck, Applicants do not waive their right to provide additional arguments in support of patentability of pending claims, if necessary.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. G. Campbell, III', written in a cursive style.

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